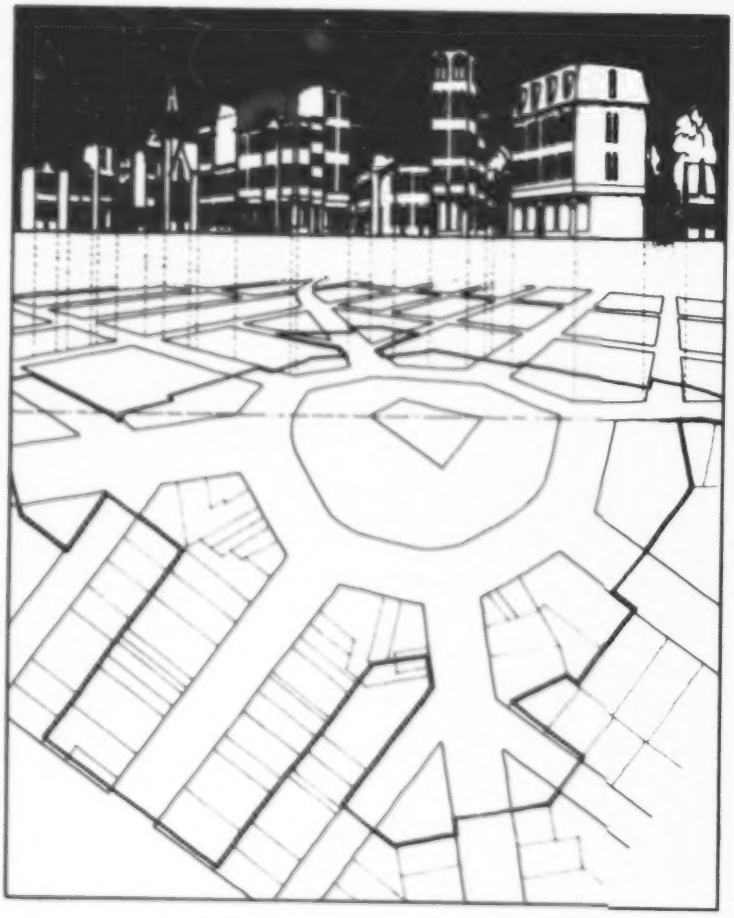
ONTARIO'S HERITAGE CONSERVATION DISTRICT GUIDELINES



The Ontario Ministry of Citizenship and Culture

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ONTARIO'S HERITAGE CONSERVATION DISTRICT GUIDELINES

The Ontario Ministry of Citizenship and Culture

Susan Fish, Minister

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These guidelines address matters specific to Part V of the Ontario Heritage Act. For more general information on heritage conservation in the province, especially on the designation and conservation of individual properties of architectural or historic value, consult **A Heritage Conservation Primer,** published by the Ministry of Citizenship and Culture. Copies of the Primer and of the Act itself are available from the Ontario Government Bookstore or from MGS Publications Services.

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INDEX TO THE LEGISLATION

Excerpt from the Ontario Heritage Act, R.S.O., 1980, c. 337

PART V

HERITAGE CONSERVATION DISTRICTS

Heritage conservation districts

40.—(1) The council of a municipality may by by-law define the municipality or one or more areas thereof as an area to be examined for future designation as a heritage conservation district and the council may, after such examination is completed, prepare official plan provisions with respect to such designation.

Consultation

(2) Where the council of a municipality has established a local advisory committee under section 28, such council shall, before passing a by-law to define the municipality or one or more areas as an area to be examined for future designation as a heritage conservation district under subsection (1), consult with its local advisory committee. 1974, c. 122, s. 40.

3.1: Official plans and heritage conservation districts (page 8).
3.4: Area examination and public participation (page 10).
3.5: The ingredients of a district (page 10).
3.6: District planning guidelines (page 19).

Designation of heritage conservation district

41.—(1) Subject to subsection (2), where there is in effect in a municipality an official plan that contains provisions relating to the establishment of heritage conservation districts, the council of the municipality may by by-law designate the municipality or any defined area or areas thereof as a heritage conservation district.

Part IV not to be designated

(2) No property designated by a council of a municipality under Part IV shall be designated as part of a heritage conservation district under this Part.

Approval of Board required

(3) A by-law passed under subsection (1) does not come into force without the approval of the Board.

3.1: Official plans and heritage conservation districts (page 8).
3.2: Designation by-law (page 8).
3.6: District planning guidelines (page 19).

Notice

(4) The council of the municipality shall, in such manner and to such persons as the Board may direct, cause notice of its application to be given to the Board for approval of a by-law under subsection (1).

3.3: Approval of the Ontario Municipal Board (page 9).

Notice to Foundation

(5) The council of a municipality shall, in addition to any notice required under subsection (4), cause notice to be given to the Foundation of its application to the Board for approval of a by-law under subsection (1).

Hearing

(6) The Board shall, before approving a by-law under subsection (1), hold a hearing open to the public for the purpose of inquiring into the merits of the application and of hearing any objections that any person may desire to bring to the attention of the Board.

Approval by Board

(7) The Board may approve a by-law under subsection (1) as to the whole or any part of the area defined therein and such approval does not become effective until the issue by the Board of its formal order thereof.

Expiry

(8) Unless the council of the municipality applies to the Board for approval of a by-law under subsection (1), within fourteen days from the date that it is passed by the council, such by-law shall be deemed to be repealed on the expiry of the fourteen days. 1974, c. 122, s. 41.

Erection, demolition, alteration or removal prohibited

42. Where a by-law has been passed under section 41, no person shall in the area defined in the by-law erect, demolish or remove any building or structure, or alter the external portions thereof, without a permit therefor issued by the council of the municipality unless,

(a) the by-law has been deemed to be repealed under subsection 41 (8),

4.1: The permit application process (page 23).

(*b*) the Board has issued an order refusing approval of the by-law; or

(*c*) in the case of demolition or removal, 180 days have elapsed as provided for in subsection 44 (2). 1974, c. 122, s. 42.

Application

43. (1) An application for a permit referred to in section 42 shall be made to the council of the municipality and shall contain or be accompanied by such information, drawings and other material as may reasonably be required by the council to fully consider the application.

4.2: *Information required for a permit application (page 23).*

Decision of council

(2) An application under subsection (1) shall be considered by the council and the council, within ninety days of the receipt of the completed application or such longer period as is mutually agreed by the applicant and the council, shall,

4.1: *The permit application process (page 23).*
4.3: *Consideration of a permit application (page 24).*

(*a*) issue the permit as requested; or

(*b*) advise the applicant in writing that a permit is refused.

Terms and conditions

(3) Such terms and conditions as the council considers desirable may be attached to a permit issued under subsection (2). 1974, c. 122, s. 43.

4.1: *The permit application process (page 23).*
4.4: *Terms and conditions (page 25).*

Erection or alteration

44. (1) Where an application under section 43 to the council of a municipality for a permit to erect a building or structure or to alter the external portions of any building or structure is refused or the council fails to make a decision thereon within the period provided for in section 43 or the council attaches terms or conditions to a permit, the applicant may, within thirty days of receipt of a permit or advice in writing from the council under subsection 43 (2), appeal to the Board and the Board shall hear the appeal and,

4.1: *The permit application process (page 23).*
4.5: *Right of appeal (page 28).*

(*a*) dismiss the same; or

(*b*) direct that the permit be issued with or without such terms and conditions as the Board by its order may direct.

Demolition or removal

(2) Where an application under section 43 to the council of the municipality for a permit to demolish or remove a building or structure is refused or the council fails to make a decision thereon within the period provided for in section 43, the applicant, upon expiration of a period of 180 days from the date of refusal by the council to issue a permit or from the expiration of the period provided for in section 43 may proceed to demolish or remove the building or structure subject to the provisions of any other Act or regulation thereunder. 1974, c. 122, s. 44.

4.6: *Demolition or removal (page 28).*

Application

45. The provisions of sections 36, 37, 38 and 39 apply in respect of any building or structure and the land appurtenant thereto that is situate within the area that has been designated by by-law under this Part as a heritage conservation district. 1974, c. 122, s. 45.

4.7: *Acquisition and easements (page 29).*

Delegation

46. The council of a municipality that forms part of a county, a metropolitan, regional or district municipality may delegate its powers under this Part to the council of such county, metropolitan, regional or district municipality of which it forms part. 1974, c. 122, s. 46.

1. INTRODUCTION

The purpose of these guidelines is to assist municipalities, local architectural conservation advisory committees (LACACs) and others in the designation of heritage conservation districts as provided for in Part V (sections 40 to 46 inclusive) of the **Ontario Heritage Act**, R.S.O., 1980, c.337, as amended. These guidelines supersede all previous guidelines published by the Ministry of Citizenship and Culture and its predecessor, the Ministry of Culture and Recreation.

The guidelines distinguish what a municipality must do in order to designate a heritage conservation district under the Ontario Heritage Act from what the municipality may consider optional but sometimes advisable. The ministry's intention is to show municipalities what choices of procedural matters may be available to best suit local circumstances while ensuring that the basic requirements of the Ontario Heritage Act are met.

These guidelines contain some statements that interpret the legal requirements of district designation. Such statements are only advisory; they do not substitute for the legislation itself.

As more heritage conservation districts are studied and successfully designated these guidelines may be updated and revised to incorporate that experience. For further information and advice contact:

Architecture and Planning Unit
Heritage Branch
Ministry of Citizenship and Culture
77 Bloor Street West
2nd Floor
Toronto, Ontario
M7A 2R9
Telephone: (416) 965-4961

Whether a heritage conservation district contains fine historic architecture, unique natural or man-made landscapes, or accumulated relics of our industrial, social, religious or military heritage, it must always remain a living part of a community, able to accommodate change in the future as it has in the past.

2. AN OVERVIEW OF DISTRICT DESIGNATION.

The Ontario Heritage Act is administered by the Minister of Citizenship and Culture, who may determine policies, priorities and programs for the conservation, protection and preservation of Ontario's heritage. The legislation entrusts local municipalities with major responsibilities for the protection of heritage features.

Part V of the Act, "Heritage Conservation Districts", plays an important role in aiding the protection of Ontario's diverse and rich heritage of buildings and places. The provisions of Part V enable a municipal council to designate the whole or any part of the municipality as a heritage conservation district. Unlike Part IV of the Act, which has as its concern the designation of individual properties having architectural or historic value, Part V is concerned with the protection and enhancement of groups of properties that collectively give an area a special character. This character derives not only from individual properties which may be of architectural or historical interest but also from the overall historic and aesthetic values of buildings, streets and open spaces seen together. District designation under Part V of the Act provides a tool for protecting that character in the course of change and development within a municipality.

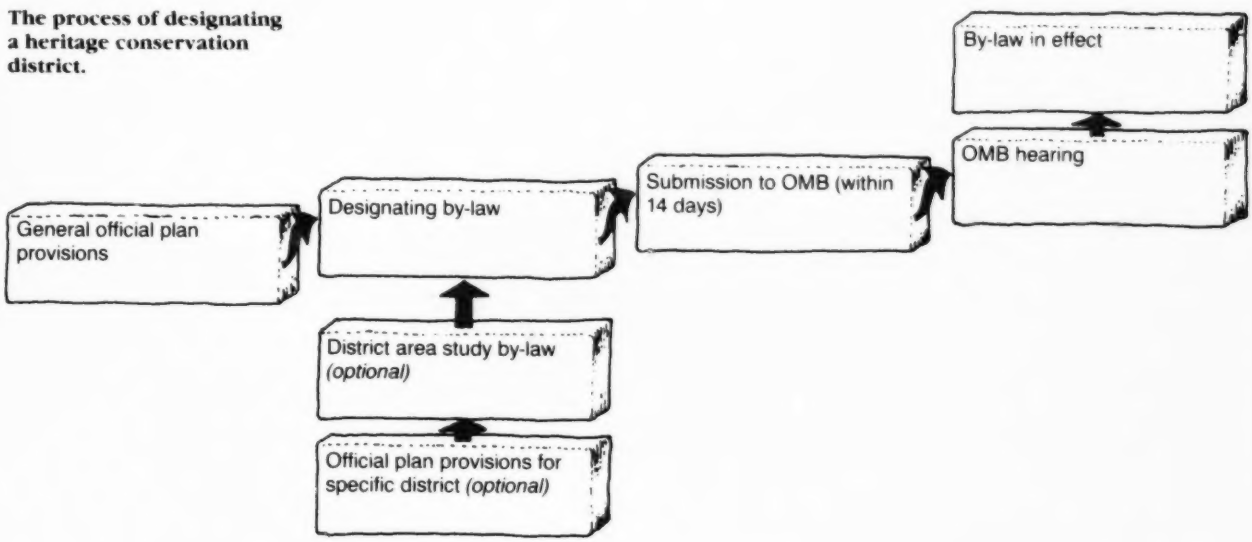
The designation of a heritage conservation district enables the council of a municipality to control change and development in a way that protects and enhances the character of the district. Skillful use of a designated district's permit application process can accommodate aesthetic, visual and other changes in the character and quality of the built environment to enhance beneficial or to ameliorate adverse effects on the heritage value of the district. Though designation of a district under Part V of the Act is primarily concerned with its physical buildings, structures, and spaces, there can be beneficial social and economic influences associated with such designation: community well-being may well be enhanced through property improvement, tourism development, improved business opportunities, broadened job markets, and so on. District designation can be used successfully alongside other instruments of municipal policy such as municipal plans, renewal and revitalization programs, and public works in order to conserve the special character of heritage districts while enhancing their future value.

Since 1975, when the Ontario Heritage Act first came into force, the experience of the ministry and many municipalities has demonstrated several key ingredients for successful heritage conservation districts:

- a sound examination of and rationale for district designation, especially for the delineation of district boundaries;
- active public participation in the designation process;
- a clear and complete designation by-law;
- clear and well publicized policies for controlling development in the district to protect and enhance its special, unique character.

The following guidelines are intended to assist with most matters related to the designation of successful heritage conservation districts. The guidelines distinguish requirements of the Act from suggestions and advice on optional matters, based on experience throughout Ontario and beyond its borders. The *requirements* comprise a standard framework for civic initiative anywhere in the province; the *advice* may well be applied differently from place to place so as to produce the best results.

The process of designating a heritage conservation district.


By-law in effect
OMB hearing
Submission to OMB (within 14 days)
Designating by-law
General official plan provisions
District area study by-law (optional)
Official plan provisions for specific district (optional)

3. DESIGNATING A DISTRICT.

3.1 Official plans and the establishment of heritage conservation districts.

Subsection 41(1) of the Ontario Heritage Act requires that prior to designating a heritage conservation district by by-law a municipality must have an official plan that contains provisions relating to the establishment of districts.

The Act does not stipulate what these "official plan provisions" should include, and municipalities may have official plan policies already in place that would enable them to proceed directly to the enactment of a district designation by-law. But it is advisable that official plan policies contain reference to the Ontario Heritage Act and its requirements, and include a statement of intent to designate one or more areas of the municipality as a district. Some municipalities may wish in addition to incorporate criteria for the selection and prospective designation of districts, and to include supplementary maps or schedules.

Under section 40 of the Act a council may pass a by-law defining one or more areas in the municipality to be examined for future designation as a heritage conservation district. The Act does not require this but merely enables it. Nevertheless, thorough examination of a district, including active public participation, is an important part of preparing a designating by-law under section 41 that will stand up to the scrutiny of an Ontario Municipal Board hearing and gain the necessary Board approval. Rigorous examination of an area may well reveal the necessity to amend zoning by-laws or official plan policies to encourage land uses that are sympathetic or complementary to the character of the proposed conservation district. The need for and use of a section 40 by-law will thus depend on how a municipal council deals with planning in general.

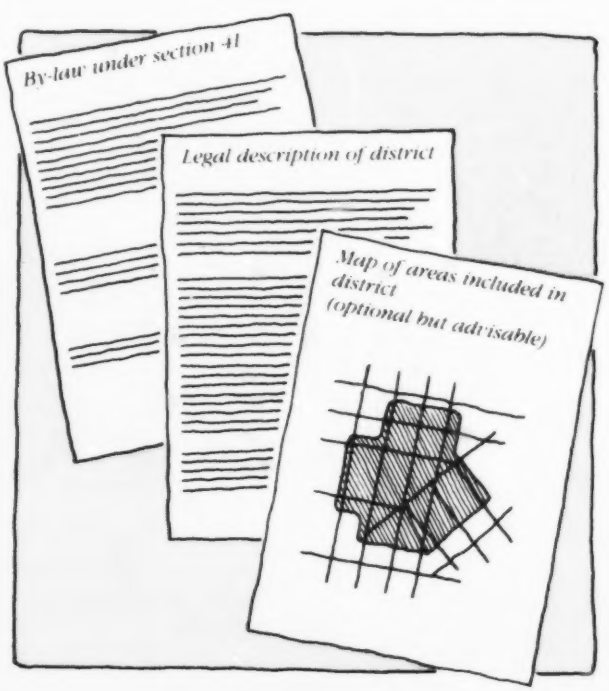
3.2 Designation by-law.

Provided that the municipality's official plan contains the appropriate statements as noted above, subsection 41(1) of the Act enables the municipality to designate by by-law all or any part of the municipality as a heritage conservation district.

The Act does not specify the content of the by-law nor how areas are to be defined. But it is advisable that the area to be designated as the district be clearly identified in a map attached as a schedule to the by-law.

The municipality must be careful to ensure in selecting, defining and designating the district that individual property designated under Part IV of the Act is not included in this area. Subsection 41(2) makes it clear that no property may be designated under both Parts IV and V. As there may be heritage buildings already designated under Part IV which make important contributions to the character of the whole district, municipalities may choose to exclude individually designated properties from the district altogether, or repeal the individual designating by-laws under Part IV and include those properties in the designated district.

The parts of a heritage conservation district by-law.



3.3 Approval of the Ontario Municipal Board.

Subsections (3) to (8) of section 41 set out the procedures necessary to obtain formal Ontario Municipal Board (OMB) approval of the by-law designating the district.

A by-law only comes into force when it is approved by the OMB (ss. 41(3)). Council must submit the by-law for OMB approval within fourteen days from the date it is passed by council. Otherwise, the by-law is deemed to be repealed on expiration of that fourteen-day period (ss. 41(8)).

When an application for approval of the by-law is made to the OMB, the Board may require the municipality to notify certain persons of the application, such as, for example, property owners within the proposed district (ss. 41(4)). The Act also requires that the Ontario Heritage Foundation be notified of the application to the OMB (ss. 41(5)).

The OMB must hold a public hearing before it approves a designation by-law, to inquire into the merits of the application and to hear any objections (ss. 41(6)). The OMB may at its discretion hear presentations from property owners and others who support designating a district under the Ontario Heritage Act in addition to those who may object. This requirement differs from that of the Planning Act, wherein a hearing may be waived if no objections are filed.

The Act is silent on what matters are to be considered by the OMB beyond the general specification of the application's merits and any objections. It is nevertheless advisable that a municipality proceed with care and thoroughness in presenting its district designation. Aside from the obvious and sensible measures taken to provide fair and proper notice of its intentions, as well as to satisfy the OMB that council's decisions were made on full consideration of available information, the municipality should be capable of showing that it has acted without discrimination, bad faith or caprice in selecting and delineating the district.

Thus, in approaching the OMB, the municipality should prepare itself to explain the heritage attributes of the proposed district, to describe its predominant characteristics and to rationalize its proposed boundaries. Much or all of this material should result from the area examination and public participation described below. As well, the municipality should be prepared to rationalize the inclusion of each individual property in the proposed district. Inevitably this will vary from property to property: some properties may be of architectural interest, some may contribute to a collective characteristic, and others may have historical associations, while vacant or undeveloped lands may be included because their development will affect the coherence and character of the district.

Many municipalities have not only undertaken examinations of their districts to determine why the area is important but have actively pursued the preparation of a heritage conservation district plan or of heritage conservation guidelines. Such documents show councils, property owners and municipal staff what may be regarded as acceptable and desirable changes within the district. However, approval of these plans or guidelines by the OMB is not required by the Act; the OMB normally considers them to be outside its interest.

Once the OMB has considered both the merits of the application and any objections, it may approve the by-law. Its approval can apply either to the whole or any part of the area proposed for designation as a district in the by-law. OMB approval only becomes effective when the Board issues its formal order (ss. 41(7)).

The Act requires notice to be served on the Ontario Heritage Foundation when an application for OMB approval is sought. There is no further requirement for further Foundation involvement. There is in addition no requirement that staff of the Ministry of Citizenship and Culture attend the hearing or that ministry endorsement of the proposed district be sought by the municipality. Nevertheless, a ministry official may attend the hearing as a witness if requested by a party to the hearing.

3.4 Area examination and public participation

As noted earlier a municipal council may choose to pass a by-law to define the municipality or any areas within it as areas to be examined for prospective designation as a heritage conservation district (s.40). After such examination the council may prepare official plan provisions with respect to the prospective designation (ss.40(1)). These are not mandatory. A by-law passed pursuant to section 40 of the Act is not necessary for the proper application of section 41; district examination is not a condition which is required to be fulfilled before council can exercise its power to designate a heritage conservation district. But, given the scrutiny of the public and of the OMB, it is inadvisable to designate a district without such careful examination.

Though the ministry has recommended in the past that the examination of a district take the form of a "heritage conservation district plan" or "HCD study", neither are statutory requirements. The ministry does not insist that such a plan or study be done as such, but it is certainly advisable that proper background work be done, for the reasons already discussed. The form of the documentation in a "plan", "study" or other statement is left to the discretion of the municipality and will not require endorsement by the ministry.

The Act does not require a specific form of public participation and only requires LACAC consultation before the passing of a by-law to define an area to be examined for future designation (ss.40(2)). It is conventional wisdom in planning and development matters that the community be involved and encouraged to participate in processes and deliberations that will affect that community. The process of district designation should be no exception to this convention. Efforts should be made to fully inform all interested parties of the work in progress. Councils should be aware that the OMB will have to be satisfied that all procedures were carried out in a fair, open and impartial manner and that the affected public was at all times adequately informed.

3.5 The ingredients of a district.

The Act does not define "heritage" or "heritage conservation district" as such; neither does it describe how the "examination" is to be carried out. Nevertheless, the experience gathered to date in heritage conservation district planning and designation provides a sound base upon which to address these matters more fully. There are three prime ingredients needed for a successful district—evaluation, delineation and participation.

Though heritage conservation districts are often the creations of cities and towns, districts can as easily be rural as urban

EVALUATION.

Defining heritage. In general, properties of heritage value should be able, with suitable examination, to reveal some of the broad architectural, cultural, social, political, economic or military patterns of our history, or should have some association with specific events or people that have shaped the details of that history. What each community thinks appropriate to its heritage will vary, but the key to its protection is to understand the distinction of a place or area in its larger context.

Individual buildings, streetscapes, and entire areas of historic architecture are physical focal points for community memories that give us a firm sense of belonging in and to the environment.

Describing area character. A heritage conservation district is an aggregate of buildings, streets and open spaces that, as a group, is a collective asset to a community in precisely the same way that an individual property is valuable to that community.

A district may comprise a few buildings or an entire municipality. It may have architectural, historic, scenic, or archaeological aspects worth conserving. Above all else, a heritage conservation district has a special character or association that distinguishes it from its surroundings. Potential districts can be found in both urban and rural environments and may comprise residential, commercial and industrial areas, established rural landscapes or entire villages or hamlets.

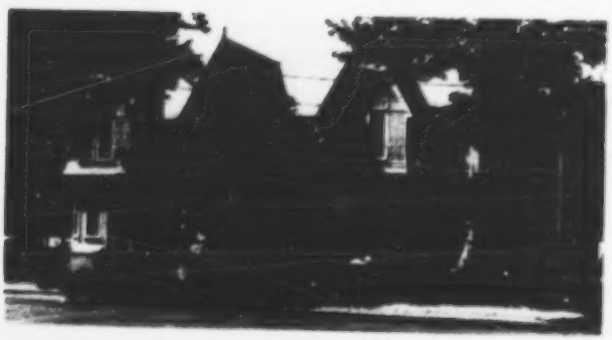
Successful area examination has always included an evaluation of each property from a variety of perspectives. The following criteria suggest the basic questions that ought to be addressed.

Area character may sometimes consist of pleasant qualities that are hard to define or to separate from those of surrounding areas, or it may be easily recognized as a collection of relatively homogeneous architecture of a specific area.

Historical associations. A building, structure, or property may have been associated with the life of a well known historic personage or group, or have played some role in an important historical event or episode.

Architectural value. A building or structure may be exemplary for the study of the architecture or construction of a specific period or area, or the work of an important builder, designer, or architect.

From his library balcony (c. 1861, restored) near Holy Trinity Church in Toronto, rector and historian Dr. Henry Scadding could see through the spires of the growing city south to the Island and east to the Scarborough Bluffs. With this view always before him, he produced the city's first comprehensive history in 1873. *(top)*



Architectural quality is evident in those surviving early groups of urban housing (as in this row at Kingston) that display interesting and useful design features as well as craftsmanship in their construction. *(top)*

Buried in the cemetery of St. Patrick's Church at Lucan are the remains of five of the Donnelly family, murdered in 1880 in the course of a blood feud brought from Ireland that continued afterward to the tune of perhaps 20 more violent deaths. Though unpleasant history, it is still an important part of the community's memory. *(bottom)*

Sometimes it is possible to identify the hand behind notable architectural quality—here (at Cobourg's Victoria Hall) it belonged to Kivas Tully, noted Ontario architect of the mid-nineteenth century. *(bottom)*

Vernacular design. A modest well-crafted building or structure may be no less important to the community's heritage than an architectural gem such as a mansion or public building.

Integrity. A building, or structure, together with its site, should retain a large part of its integrity—its relation to its earlier state(s)—in the maintenance of its original or early materials and craftsmanship.

The commonplaces of the early settlements of Ontario, now increasingly rare, show us some of the roots of later, higher-style, historic architecture.

This riot of shaped, turned and carved wood appears almost as it did when built, and relies for its impressiveness on its integrity: its survival as an ensemble with little modification.

Architectural details. Specific architectural considerations should include style, plan, and the sequence of spaces; use of materials and details, including windows, doors, signs, ornaments, and so on; colors, textures, and lighting; and the relationships of all these to neighbouring buildings.

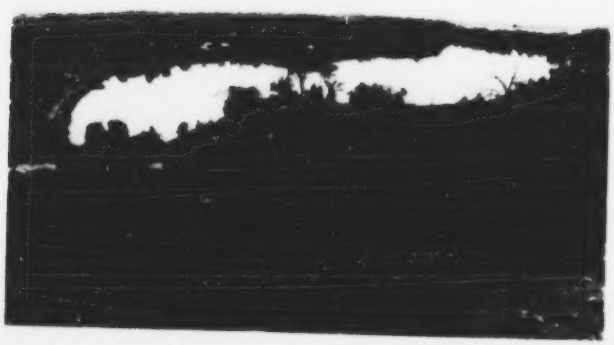
Landmark status or group value. Where a building or structure is an integral part of a distinctive area of a community, or is considered to be a landmark, its contribution to the neighbourhood character may be of special value.

Looking closely at the buildings in a district can reveal architectural features or details distinctive to a specific area of the province, as in the case of the cobblestone facades of Paris, or details that simply display Ontario craftsmanship of a specific era, such as the urban building boom of the 1880s.

Most of our communities are quite diverse architecturally, so that a group of similar buildings, though ordinary as individuals, acquires a special character deserving protection. Protection of an ensemble is no less important for a landmark building, which relies on adjacent, less conspicuous features as the context for its distinction.

Open spaces. Examination of a potential district should also include public spaces such as sidewalks, roads and streets, and public parks or gardens. These features often play roles as conspicuous as those of buildings in the environment. Open spaces provide settings for buildings as well as places to view them and the landscapes in which they sit. These spaces are often features of the original plan or survey of a settled community and have intrinsic value in ordering and organizing the location of buildings and structures

Vacant land and contemporary structures. Vacant, undeveloped or underdeveloped land or contemporary buildings and structures *should not* be summarily dismissed from either examination or inclusion within the proposed district. Municipalities may wish to include these types of property where it is likely that incongruous development or unsympathetic construction on these sites will adversely affect the character of the proposed district. It may well be such sites that enable the distinction of the district to be enhanced, or damaged, in the future.



An urban park enclosed by buildings and streets is often the centre, and centrepiece, of a cohesive area meriting district protection, but no less important may be "natural" areas of land and water that provide a unique setting for a potential district.

Including newer buildings and vacant land in a heritage conservation district is often crucial—the overall effect of a district may be badly weakened or trivialized unless new development fits well with the old.

DELINEATION.

Establishing the boundary that will encompass the proposed district is a crucial task. Its principal objective is to ensure that the special character identified through *study of the proposed district will be* adequately protected by the measures available to the municipality in Part V of the Act. The district boundary should be established according to the unique characteristics of the area. Examples of potentially successful districts include:

- ☐ areas that have changed little since first developed and that contain buildings, structures and spaces with linkages and settings as originally planned still substantially intact—a group of civic and institutional buildings located around a public square, or a waterfront area with its marine-related structures are good examples
- ☐ areas of buildings or structures of perhaps similar or perhaps different architectural style and detailing which, through the use of materials, height, scale, massing, colours and texture, comprise cohesive, harmonious streetscapes having a definite sense of place distinct from their surroundings;
- ☐ areas of buildings and structures that have acquired a definite sense of time and place through historical associations with activities, events and individuals.

Boundaries should be drawn to include not only the buildings or structures of interest but also the whole property on which they are located. Vacant land, infill sites, public open space and contemporary buildings may also be contained within the district where it is desirable to ensure that their future development is in keeping with the character of the area. Buildings and structures of less obvious historical or architectural merit but that contribute to the scale or scenic amenity of the area may also be included. Boundaries may follow distinctive topographical features such as rivers, roads, walls, fences, treelines and slopes. Less visible elements such as property or lot lines, land use designations in official plans or boundaries for particular uses or densities in the zoning by-law may also influence the delineation of the boundary, especially as they may affect its eventual legal description in by-law form.

Many of these factors will overlap or produce similar lines on a map, but a general *caution is in order when* setting the edges of a district—in drawing the lines of an edge on the two-dimensional map, always consider how that line will be perceived in the district itself, in three dimensions and over time. Though a district's legal and financial implementation depends on the two-dimensional lines, its ultimate effect will be judged by how well it protects and conserves the real, visible, three-dimensional character of the district embraced by those lines.

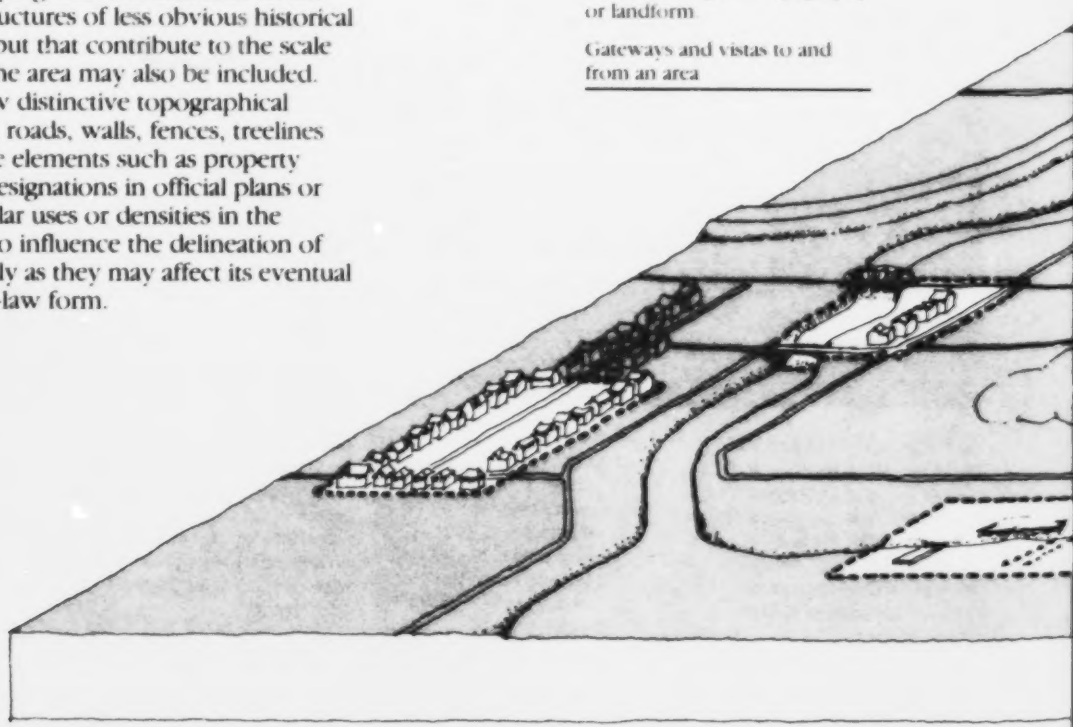
VISUAL PERCEPTIONS

Definition of distinctive concentrations of architecture, based on thorough survey (criteria may include location, design, scale, style, layout, setting, materials, workmanship, feeling, association)

Marked change in building character (massing, height, setback, etc.)

District changes in topography or landform

Gateways and vistas to and from an area



HISTORICAL EVOLUTION

Boundaries of an original settlement, or early planned settlement.

Concentrations of early buildings and sites.

Defined areas affected by specific historic events

PHYSICAL SITUATION

Railroads and major highways

Streets, public utilities and rights-of-way

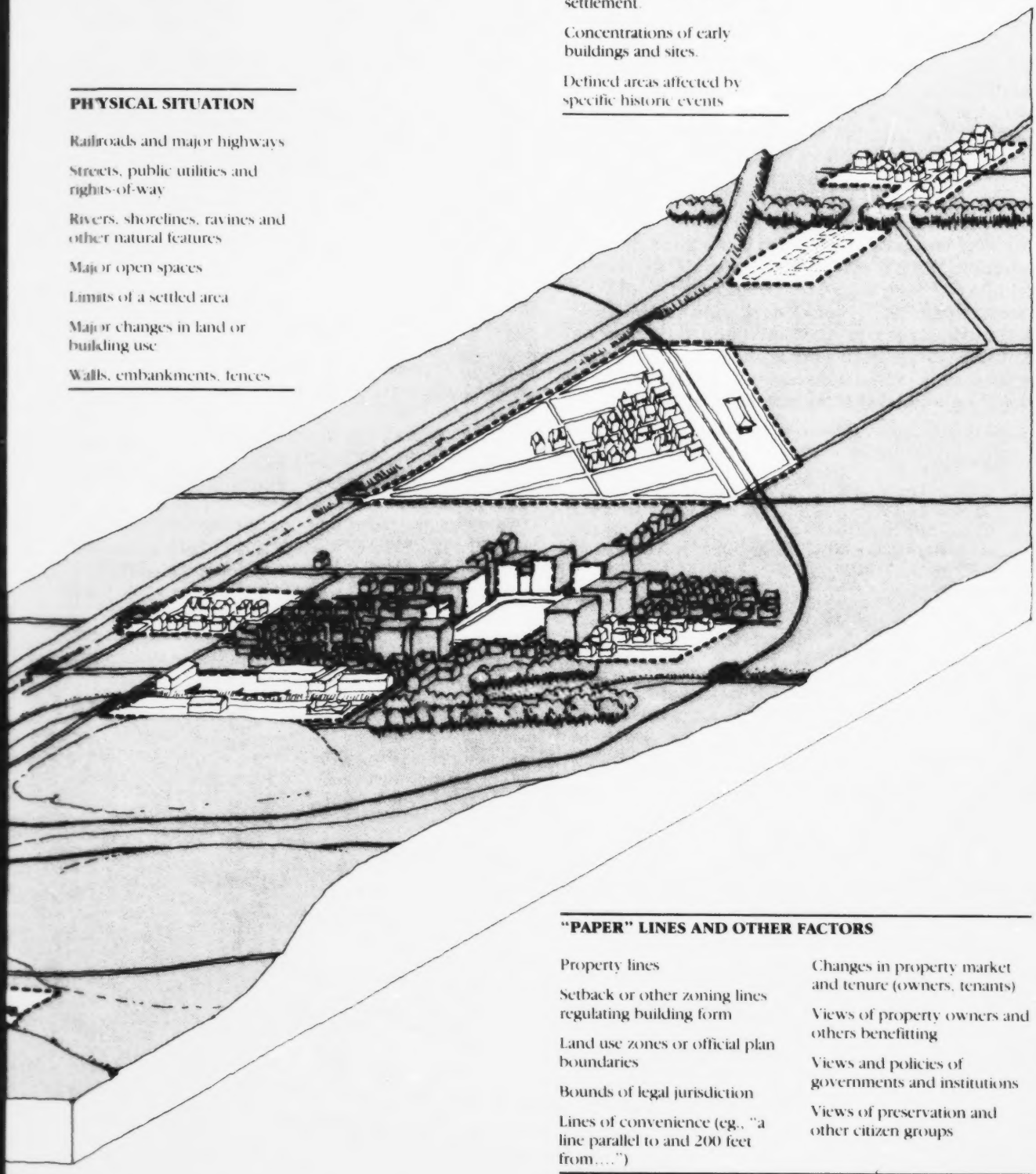
Rivers, shorelines, ravines and other natural features

Major open spaces

Limits of a settled area

Major changes in land or building use

Walls, embankments, fences



"PAPER" LINES AND OTHER FACTORS

Property lines

Setback or other zoning lines regulating building form

Land use zones or official plan boundaries

Bounds of legal jurisdiction

Lines of convenience (eg., "a line parallel to and 200 feet from....")

Changes in property market and tenure (owners, tenants)

Views of property owners and others benefitting

Views and policies of governments and institutions

Views of preservation and other citizen groups

PARTICIPATION.

The Act does not require any form of public participation other than municipal consultation with its LACAC prior to enacting a by-law for a study under section 40; the OMB may make its own requirements for notifying certain people as it sees fit.

Public participation and consultation in the designation of districts is nevertheless very desirable. Public meetings during the examination process, individual notification to property owners within a study area, and notices or articles in local newspapers advertising municipal proposals are all valuable for both informing the public and enabling the public to respond to proposals for designation.

In some cases it has become a practice during the process of district designation to eliminate possible objectors to designation by excluding their properties from the proposed district. This is not generally advisable. While it may seem expedient in the short term to take such action, the overriding objective of a district should be to protect and enhance all buildings and structures of heritage value within its boundaries. Any objectors to district designation will be able to voice their concerns and present supporting or objecting arguments at the mandatory OMB hearing.

Public participation is not merely a legislative requirement —it is as well an opportunity for a community to understand and treasure its history and architectural inheritance.

3.6 District planning guidelines.

Section 40(1) indicates that after examination of an area for future designation as a heritage conservation district a municipal council may prepare official plan provisions regarding the designation of that district. Such official plan provisions are not necessarily the same as those anticipated in section 41(1) of the Act. Section 40(1) alludes to the future designation of a particular district that is being subject to examination, while section 41(1) refers to the establishment of heritage conservation districts in general. These are the only statutory references to district planning.

Though "official" district plans are not specifically required by the Act, the ministry and the Ontario Heritage Foundation have advocated and supported the preparation of district plans for those areas which have been designated under the Act. These plans often document the examination of a district and the guidelines necessary as background to the permit application process mandated by the Act for many changes within the district. The status of these plans is determined by the local municipality; most district plans have been adopted either by municipal council resolution or more formally by by-law.

Although the preparation of heritage conservation district plans is not a requirement of the Act, the preparation of such plans or guidelines remains highly advisable. It is vital that permit applications, proposed district improvements, and the availability and variety of funding programs be considered within an overall framework of how the community wishes to see the district conserved and enhanced. The concern of these district plans or guidelines should be the buildings, structures and spaces within the district and the means for guiding physical change and development in the area. These will vary from municipality to municipality, and may vary within a single municipality.

Preparation of official plan provisions after district examination (section 40). Official plan provisions should indicate in graphic and written form the extent of the area to be designated as a district as well as general policies to be applied in the district. These policies should address the intended future physical development of the district, the specific objectives to be sought in conserving, protecting and enhancing the heritage environment of the area, and general design guidelines for future change in the district. The municipality may also wish to declare those matters for which it will have regard in considering permit applications under section 43 of the Act, as well as the terms or conditions that it may affix to its approvals. Detailed guidelines regarding materials, colour, infill construction and architectural style are not usually suited for inclusion into the body of an official plan; a more appropriate location would be in an appendix to the plan. This could then be referenced in the official plan as a document to be consulted in the consideration of new design or restoration activity within the district.

A checklist for district plans

- ☐ Boundary delineation
- ☐ Historical development and context
- ☐ Architecture and other built features
- ☐ Landscape and streetscape
- ☐ Land and building use
- ☐ Zoning and other use controls
- ☐ Transportation
- ☐ Public utilities
- ☐ Property ownership
- ☐ Economic base
- ☐ Demographic and social character
- ☐ Trends for change
- ☐ Current and prospective planning policies
- ☐ Programs available for regulation and assistance

Preparation of district planning guidelines. District planning guidelines may be prepared by a municipality whether or not official plan provisions under section 40 have been adopted. Depending on their relationship to the official plan, whether as basis for general policy or as a document to be consulted in the permit application process, these guidelines may take on a variety of forms.

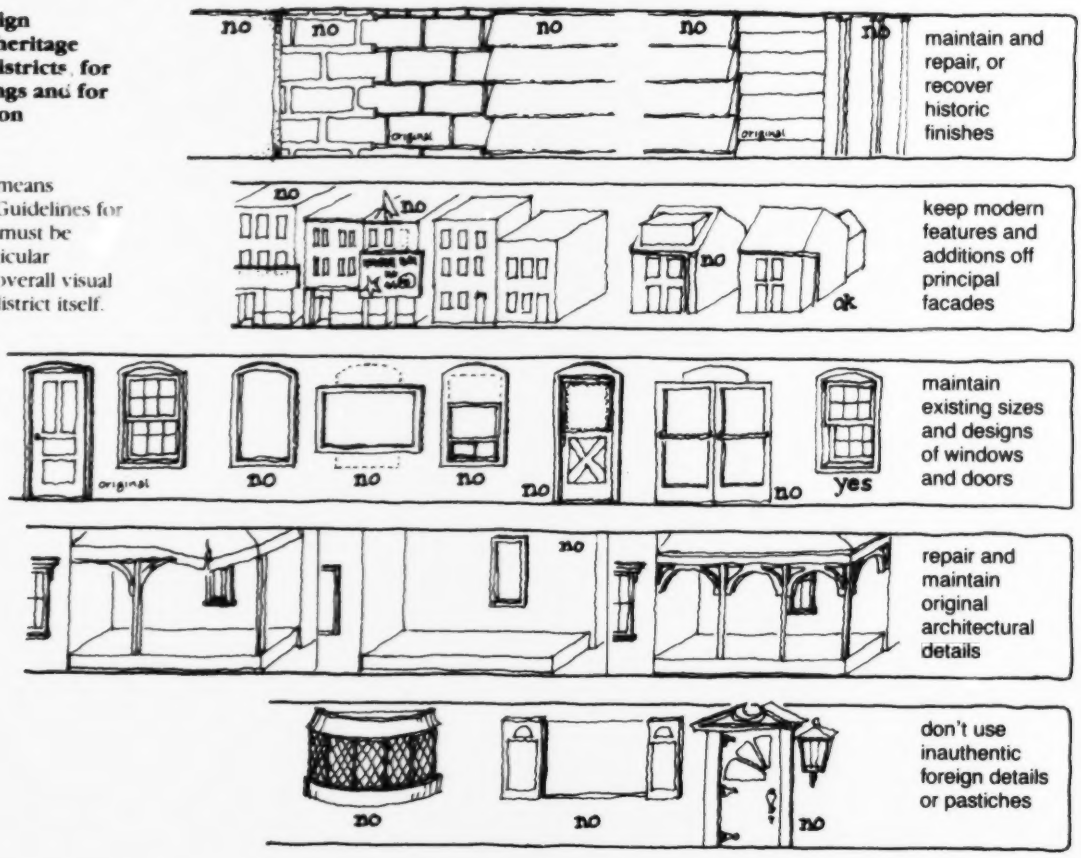
District planning guidelines should inform elected representatives and staff of the municipality as well as individual property owners how a municipal council will judge permit applications. If very detailed, the guidelines may indicate alterations, changes or development to be encouraged or discouraged for each property in the district. Though the municipality has no power to compel change, it is free to indicate the kind of alterations or new development that will be greeted with favour.

For individual buildings of architectural or historical interest the guidelines may indicate architectural details that ought to be restored, materials to be used in constructing new additions, or simply the building features that deserve special attention in ongoing maintenance. On vacant lots the preferred size, scale and siting of new building may be specified as well as the preferred colour, texture and type of materials to be used in its construction. These matters will obviously be determined by the character of surrounding buildings. In some cases a traditional building style may be preferable; in other situations a sympathetic "contemporary" design may be wholly appropriate.

For larger districts such an individual approach to each property may prove time-consuming and cumbersome. Depending on the character of the

Samples of design guidelines for heritage conservation districts, for existing buildings and for new construction

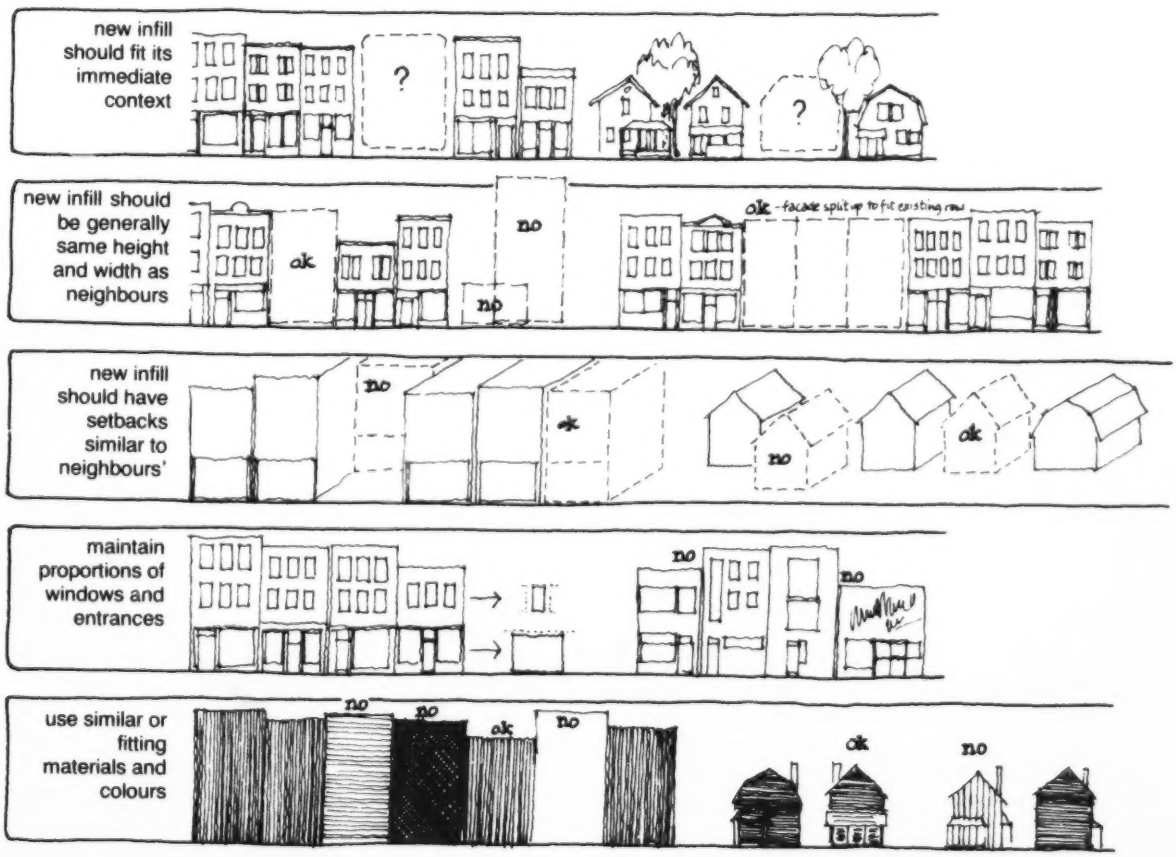
Note:
These are by no means comprehensive. Guidelines for a specific district must be based on the particular architecture and overall visual character of the district itself.



district and its types of building, it may be feasible to establish more general guidelines that would indicate the types of change considered appropriate for existing blocks or groups of buildings as well as generic design considerations for new construction.

Just as districts will vary in size, they will also differ in their physical, social and economic conditions. Although heritage conservation districts are primarily concerned with heritage buildings and physical change, it is inevitable that the district's function within its local community or region will be of importance. Some districts may have to be considered in a provincial or even national context.

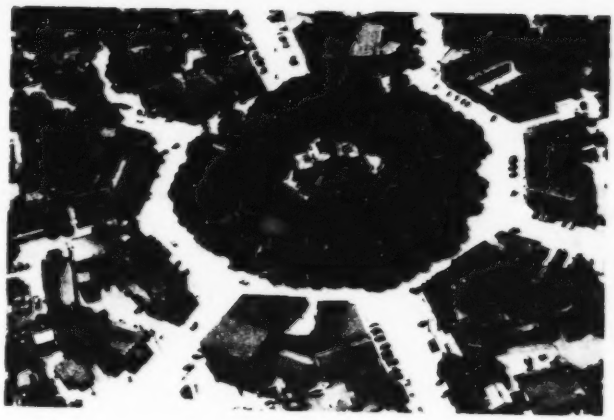
Thriving tourist centres, desirable residential areas or prestigious office locations may each depend for their success on the protection and conservation of particular heritage features. Each different function or role, however, may bring with it special problems for the heritage environment and landscape from which it derives benefit. Traffic access, parking, shop signage and outdoor advertisements may all present particular problems in any single district. It is certainly reasonable that heritage conservation district guidelines, aside from concerns for individual heritage buildings or areas, may contain specific prescriptions that may collectively benefit the district but that are not strictly limited to conserving the buildings themselves. A conservation plan may deal with traffic management schemes or incentives for the use of upper floors in older commercial blocks, for instance. Indeed, some of these issues may have to be investigated fully and policies developed in order to determine their particular bearing on the heritage buildings themselves as well as the future of the district as a whole.

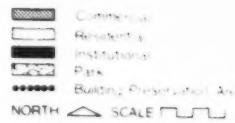


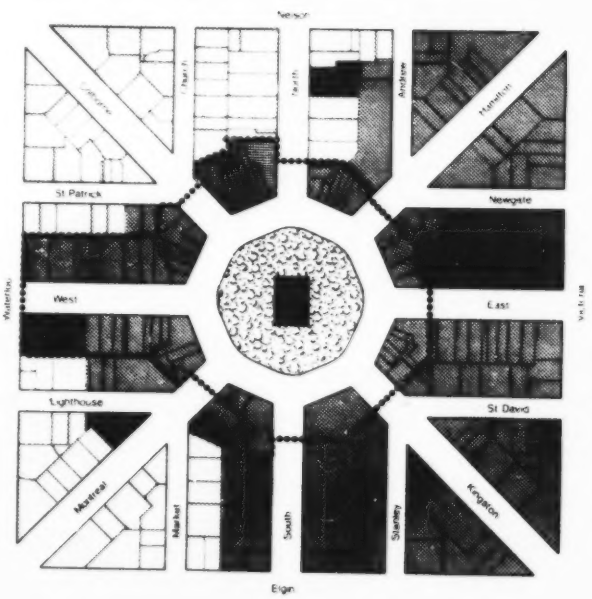
4. IMPLEMENTING A DISTRICT.

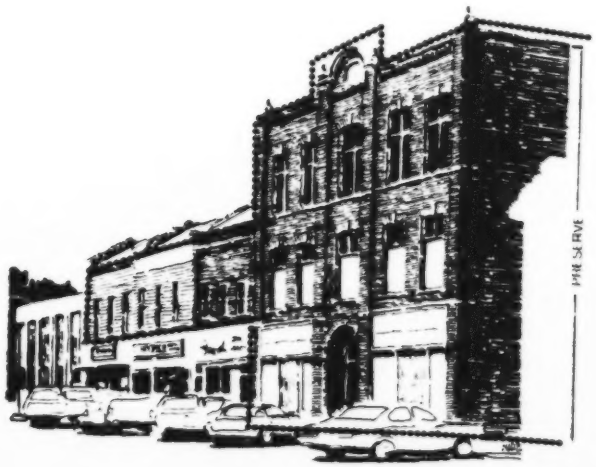
Once a heritage conservation district designation by-law is approved by the OMB and becomes effective the municipality is enabled to control, to a certain extent, physical change within the district. The principal mechanism is the permit application process which enables the municipality to review site-specific applications and determine if proposed changes to the man-made environment of the district will beneficially or detrimentally affect heritage features. These effects may be direct or indirect in their impacts.

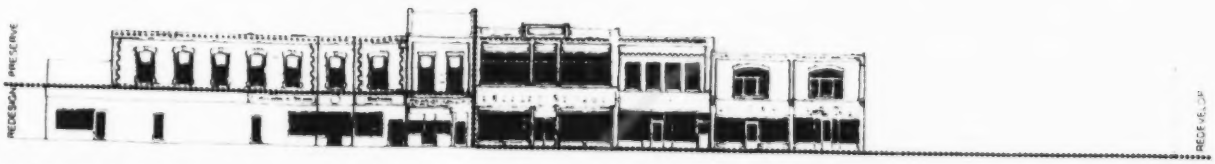
The permit application process does not control land use; neither does it control changes to natural features. Other provincial legislation, especially the Planning Act and the Municipal Act, enables municipalities to deal more effectively with these matters. Where the character of a heritage conservation district is enhanced by the existence of certain land uses or natural features, it is highly advisable that the municipality adopt measures that complement those under Part V of the Ontario Heritage Act. Tree by-laws (under the Municipal Act) and zoning by-laws (under the Planning Act) are two specific examples.











Implementing a district—
Goderich.

4.1 The permit application process.

Once a heritage conservation district designation by-law comes into force no person, including the municipality, can erect, demolish or remove any building or structure without a permit issued by the council of the municipality. A permit is also required for the alteration of the external portions of any building or structure. (s.42)

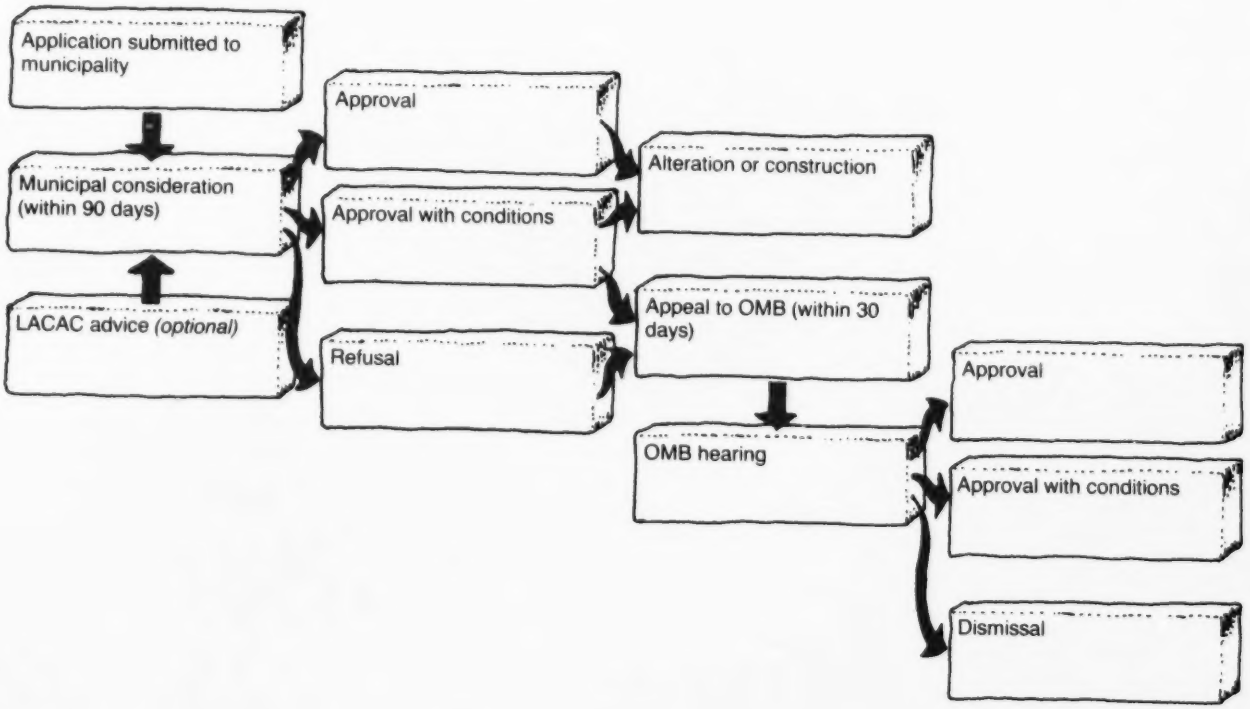
The application process is quite straightforward. A person makes application to the council of the municipality. The council considers the application and within 90 days of receipt (or some mutually agreeable longer period when necessary) either issues the permit, possibly with conditions, or refuses the permit. (ss.43(2) and 43(3)).

If the council does not make a decision within the alloted time or if the application is refused, or if there are conditions imposed that appear unreasonable, the applicant may appeal to the OMB. The appeal must be lodged within 30 days of receipt of the council's decision. The OMB may dismiss the appeal or direct that a permit be issued, with or without conditions. (S.44(1)).

4.2 Information required for a permit application.

Depending on the size of the district and the number of permit applications anticipated it may be desirable for the municipality to prepare a specific application form, as *it does for other permit* functions such as planning or building permit applications. Standard information such as location, municipal address, and name of owner should be required. The municipality will also need specific and clear information as to the essence of the proposed work, be it the erection of a new building, alteration to an existing structure, or demolition. Additional detailed information concerning the kind of materials and processes to be used both in new building and restoration work should be specified. In many cases drawings may be required to show plans and elevations of the proposed work; the municipality may require that such drawings be prepared by a qualified professional. Written specifications may also be required to supplement the drawings.

The process of obtaining a permit for building alterations or new construction in a district.



4.3 Consideration of a permit application.

The Act does not specify what matters the council of a municipality is to consider in deciding whether to issue or refuse a permit. (ss. 43(2)). Nevertheless, it is clearly advisable that municipal permit decisions be based on its background studies, including official plan provisions respecting heritage conservation districts, heritage conservation district planning guidelines where they have been formulated, and the details of the district examination.

A basic consideration for any application concerns the effects of the proposed change or alteration within the district. Some examples of beneficial work include the restoration of architectural detail on a building such as a porch, canopy or storefront or the removal of incongruous or unsympathetic additions such as aluminum siding. Where such work is proposed the municipality should also ensure that it will be undertaken properly, following good conservation practice. For instance, paintwork on masonry surfaces should seldom, if ever, be removed by sandblasting but rather by more gentle means, perhaps a gentle chemical or water wash; restored architectural details should match existing details or follow evidence revealed in historical photographs or original drawings rather than rely on guesswork, even knowledgeable guesswork. There is a great deal of published material on good and bad conservation practice that can be consulted in assessing such proposals.

Adverse effects may be caused by, for example, the loss or destruction of architectural detailing, the demolition of a building or structure which contributes to the character of the district, or the construction or addition of a building or structure which is out of keeping with the character of its surroundings on account of inappropriate location, setback, size, scale, or the type and colour of materials. Again, published material may be helpful in assessing the potential damages, and in revealing possible alternatives with less damaging effects.

These impacts must be considered in the light of the original examination of the area, the advice or guidance offered in the district plan or guidelines and any relevant official plan provisions. The main principle in assessing a permit application is the protection, conservation and enhancement of the district's character. Where council is of the opinion that the proposed work in the application does not satisfy this principle the application should be denied or approved only with terms and conditions that would ameliorate the adverse effects of the proposed work.

Careful examination and recording of the buildings, streets and spaces of a potential district are vital prerequisites to successful implementation.

4.4 Terms and conditions.

Subsection 43(3) of the Act allows municipal councils to attach such terms and conditions as the council considers desirable to permits issued under subsection 43(2). Though absence of direction from the statute appears to enable these terms and conditions to be unlimited, there are several principles that the municipal council should keep in mind.

Generally these terms and conditions should respect the objectives of the Ontario Heritage Act. They should certainly not offend any requirements of the law in general. They should be precise, relevant, necessary, enforceable, and reasonable. Their relevance should be twofold, addressing both the objectives of the district and the requirements of the specific development, and should be worded as clearly as possible.

Conditions may be attached that require plans and drawings to be submitted for the approval of council prior to work being undertaken, especially where these have not been submitted with the application itself. This may also apply to detailed specifications should circumstances warrant.

Such conditions may also be used to specify that materials used in new construction match or resemble those of surrounding buildings. In the case of additions to existing buildings of heritage value such conditions are common, though scope may be permitted for skillful designs that achieve harmonious results through other means. Conditions respecting the use of appropriate materials may also be complemented by addressing the design of specific features such as windows, doors, porches, signs and roofs. In certain instances even paint colour may be a critical consideration in respecting the heritage of the district.

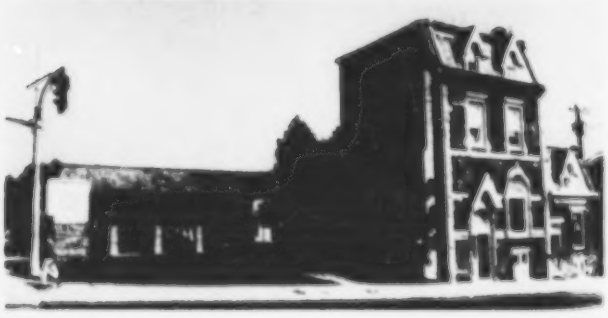
When an application for demolition is being considered by council and the building to be demolished is of particular interest due to its architectural or historical merits, council may require as a condition of approval an accurate documentary record of the structure. Measured drawings or photographic techniques such as rectified photography or photogrammetry are accepted ways of saving information and knowledge about a building when it can no longer remain in its original environment. Where a building exhibits unique or unusual construction techniques, or even techniques that were once typical but are now rare, council may require that the structure be carefully dismantled and accurately recorded. In this way historical information about the building's construction may be carefully revealed, information that would otherwise be lost in a less sensitive wrecking operation.

Where demolition and new development occur as part of the overall development of a site the information and artifacts made available through recording and careful dismantling offer potential for imaginative use in the new development. For example, terms and conditions attached to a permit may involve:

- ☐ the preservation and display of former built features, architectural details and landscaping;
- ☐ the marking of traces of former building locations, shapes and pathways or circulation lines;
- ☐ the display of graphic and verbal descriptions of former buildings and occupants;
- ☐ some reflection of the architecture and plan of the former building(s) in the new development.

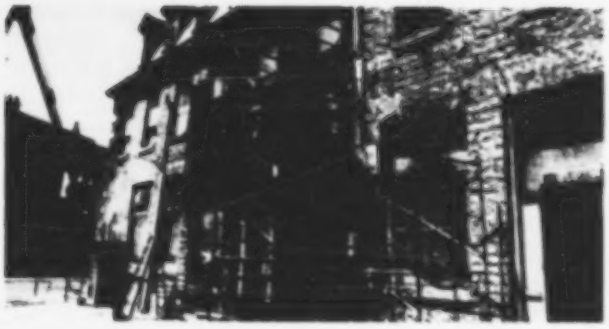
In view of the loss of heritage buildings through demolition such conditions can fulfill an important and useful purpose. They can protect the knowledge that such heritage buildings were once part of the human environment of the district, and maintain the sense of historical continuity essential to its distinctive character.

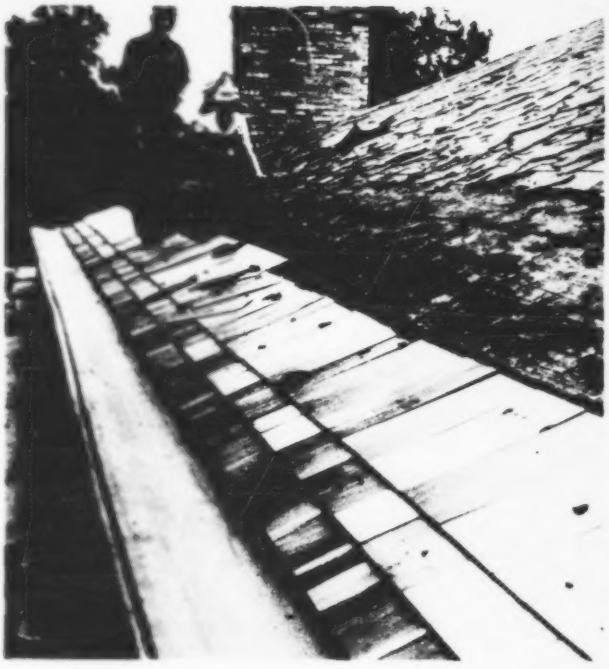
NO



Demolition, disfigurement, and ill-fitting "improvements" are the terrible prices to be paid when our architectural heritage is ignored in the course of change. Once this irreplaceable heritage is vandalized or destroyed it cannot be recovered, and a once-special community will come to look no different from the next one down the road.

YES





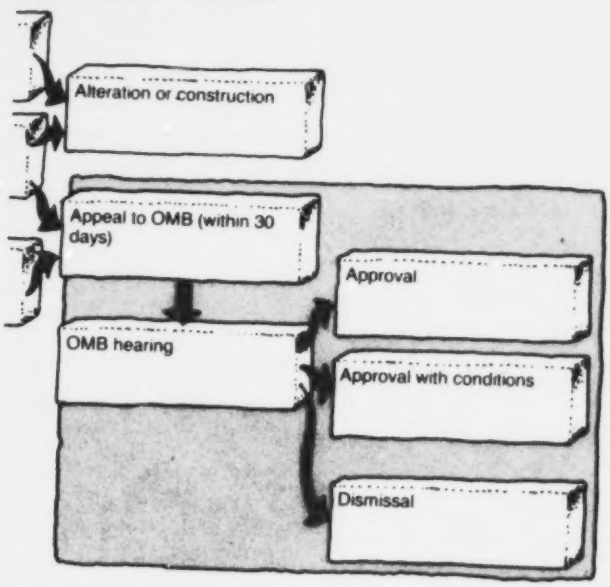
Repairing the old with traditional materials and craftsmanship; recycling old buildings with new uses; retaining vestiges of the past in new development; fitting new construction to the scale, shape, proportions and materials of the existing neighbours—these and other strategies that acknowledge the built heritage of a district will enhance a community's identity, extend the useful life of its capital resources, and economize in the building of new facilities and services.

4.5 Right of appeal.

Where a person has applied for a permit to alter or erect a building or structure and is dissatisfied by a council's decision (to refuse the permit, to insist on unacceptable conditions, or to fail to deal with the application), appeal may be made to the Ontario Municipal Board. The applicant must appeal to the Board within thirty days of receiving the permit or written advice of the council's refusal. An appeal can also be made when the council has not made a decision within the time limits prescribed by the Act.

The Board will hear the appeal and may either dismiss the appeal or direct that a permit be issued. The Board may also direct that the permit be issued with or without terms and conditions (ss. 44(1)).

The appeal process for building alterations or new construction in a district.



4.6 Demolition or removal.

The Act does not provide for the permanent protection of heritage buildings. Demolition cannot be prohibited, but it is subject to the same general requirements as those for erection or alteration of a building: a permit is required. A municipal council may approve, approve conditionally, or deny the permit application.

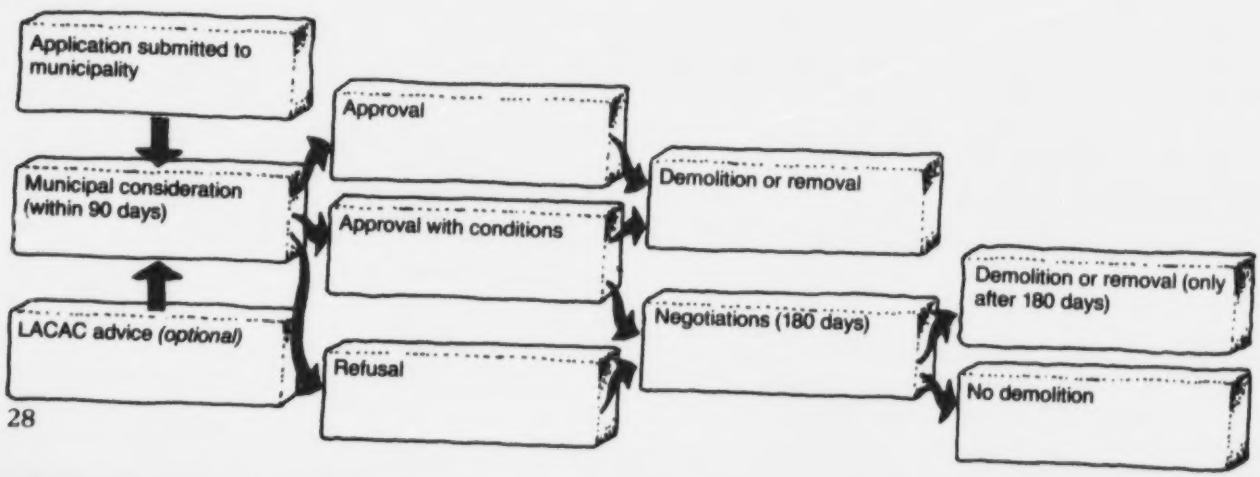
Where the building to be demolished is of heritage value, a municipality may wish to explore the use of terms and conditions such as those described above; for instance, it may specify that the features to be demolished are to be properly recorded.

Depending on the circumstances, a council may wish to deny a permit application. When a permit application is refused or the time limit permitted by the Act for consideration of an application has passed, demolition or removal can go ahead only after a period of 180 days has elapsed and only after any other required permits have been granted.

This period of time offers a council, with the aid of its LACAC and concerned citizens in the community, an opportunity to seek means to conserve the threatened structure. Depending on the circumstances, several approaches may prove successful, including these:

- ☐ Convince the owner to change plans, through persuasion that the heritage importance of the building is irreplaceable, ought to be maintained, and will be a worthy asset in any development or use of the site.
- ☐ Suggest alternate uses for the building or the property.
- ☐ Offer assistance in integrating the heritage property within some larger scheme.
- ☐ Seek involvement of the Ontario Heritage Foundation, especially with a view to the potential tax advantages available to the owner as a donor of property to the Foundation.
- ☐ Persuade the owner to sell the heritage property to the municipality or some other purchaser who will conserve it.
- ☐ Expropriate the property.

The process for controlling demolition or removal in a district.



4.7 Acquisition and easements.

Section 45 of the Act permits municipalities to undertake a variety of measures to support conservation in a district in addition to administering permit applications. The Act enables municipalities to provide grants or loans to owners of designated properties for building conservation work. The Act also provides for the municipal acquisition, or, subject to the Expropriations Act, expropriation of a designated property where its preservation is essential and no alternative is available.

A municipality may pass a by-law enabling it to negotiate easements. A heritage easement is a legal agreement between the owner of a heritage property and some other party or agency ensuring the preservation of a property while allowing the owner to retain its possession and use. The agreement gives that agency a legal interest in the property's conservation and is registered on the title to the property. The public agency holding the easement may be the Ontario Heritage Foundation (a province-wide body) or a municipal council, and either of these may assign the easement to a local heritage group or other suitable custodian.

Heritage easements are voluntary agreements, distinct from designation by municipal by-law (although the same property can be protected by both easement and designation). Easements provide much stronger protective measure short of outright purchase. Easements are also more comprehensive than designation, enabling specific agreement on such matters as maintenance.

Being a less-than-fee-simple interest in real property, an easement can achieve the protection of a heritage property at a fraction of the cost of outright purchase. For example, by donation or in return for financial assistance, an owner may agree to preserve and maintain the exterior of a structure and certain outbuildings or landscaping vital to the historic or architectural importance of that property. The easement runs with the title to the property, affecting all subsequent owners. The owner continues to use and enjoy the property, and the heritage features remain part of the community rather than a governmental responsibility.

In many cases the donation of an easement conserving a heritage property entitles its owner to significant tax advantages.

Heritage easements enable owners and communities to co-operate in guaranteeing the care and protection of such valuable and irreplaceable examples of our architectural heritage as this fine stonework.

5. FINANCIAL ASSISTANCE.

Normal upkeep and maintenance are the responsibilities of every owner of property. Heritage properties may on occasion require more intensive care than more recent construction, but that is also the responsibility of the individual owner. Nevertheless, where owners of properties recognized for their heritage importance are faced with extraordinary repair or restoration costs, there may be a need for some form of public aid in recognition of the community's interest in maintaining the value of that heritage. Designation, be it through Part IV or Part V of the Ontario Heritage Act, normally serves as the standard that makes heritage properties eligible for public financial assistance.

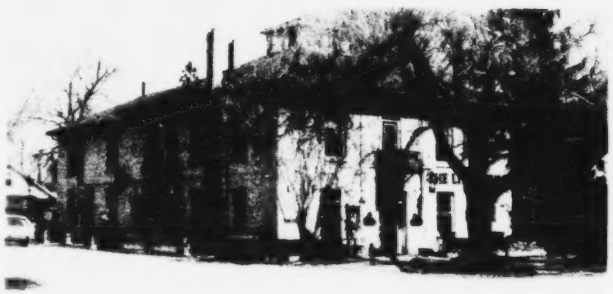
The Ontario Heritage Foundation, an agency of the Ministry of Citizenship and Culture, supports and promotes the understanding and conservation of many facets of Ontario's heritage. Among its programs is the provision of financial assistance, through grants and loans, to encourage conservation of important heritage buildings. Foundation funds are normally offered in exchange for a heritage easement. The Foundation has also received gifts of property which it conserves and holds in trust for the people of Ontario. The Foundation may also provide financial support for heritage conservation district studies and other research of similar scope.

From 1981 through 1986, the Building Rehabilitation and Improvement Campaign (BRIC) is making available funds for heritage conservation to match private or municipal contributions, depending on the individual programs. The Designated Property Grant is available for work on any designated property; the Corporate Sector Grant is available for work on designated properties of a commercial or industrial nature.

The Heritage Conservation District Fund program has been established specifically to support many types of conservation projects in designated districts, through the establishment of a special municipal fund augmented by provincial contributions. Proceeds from the fund may be used to assist individual properties within a district, as well as to conserve important aspects of the public environment.

The Community Heritage Fund program enables both municipalities and non-profit corporations chartered for heritage conservation purposes to support or to undertake conservation work through the establishment of a similar fund, again augmented by provincial contributions.

Non-profit community groups contemplating the rehabilitation or restoration of heritage properties may be eligible for capital funds to aid this work from other sources, such as other ministries and levels of government, private foundations, or corporate donors. Capital projects of this sort can be very attractive to such sponsors, providing public credit in an economical fashion.



Programs of financial aid from government or heritage organizations may assist many sorts of conservation activity in districts, such as the recovery of such architecturally important historic features as the porch of the Little Inn, prominent in Bayfield's heritage conservation district. This particular work was assisted by a grant from the Ontario Building Rehabilitation and Improvement Campaign (1981-1986).

The Ontario Ministry of Citizenship and Culture

Susan Fish, Minister

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